



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2009] IASC 117
The Route: Papua New Guinea
The Applicants: HeavyLift Cargo Airlines Pty Ltd
(ACN 102 571 746) (HeavyLift) and
Pacific Air Express (Australia) Pty Ltd
(Pacific Air Express) (ACN 074 265 553)

Public Register File: IASC/APP/200915

1 The applications

1.1 On 15 June 2009, HeavyLift applied for an allocation of 16.5 tonnes of freight capacity per week on the Papua New Guinea (PNG) route. HeavyLift plans to use the capacity to introduce a once weekly service between Cairns and Port Moresby with B727-100 aircraft. The airline also wishes to substitute larger capacity B727-200 freighter aircraft for the B727-100 aeroplanes which currently operate between Brisbane and Port Moresby. HeavyLift noted that it had previously been allocated this capacity by the Commission but handed it back to enable Qantas to operate B737 cargo services. This capacity had since been returned by Qantas. HeavyLift said that it has been operating additional capacity as charter services.

1.2 In response to HeavyLift's application, the Commission published a notice on 16 June 2009 inviting other applications for the capacity sought by HeavyLift. In response to this notice, a competing application was received from Pacific Air Express on 18 June 2009. Pacific Air Express also sought an allocation of the available 16.5 tonnes of freight capacity per week.

1.3 Pacific Air Express planned to operate a once weekly B737-300F service on a Brisbane – Port Moresby and return routing. Pacific Air Express said that it already operates this aircraft type on the Australia – Solomon Islands route (the Commission understands this is operated by Pacific Air Express (Solomon Islands)). Existing customers have advised that they require freight capacity on the Australia – PNG route. Pacific Air Express said that its service would provide competition for the one other dedicated freight airline operating services on the route. Pacific Air Express noted that in 2005 it had returned freight capacity allocated to it by the Commission because of ongoing law and order difficulties at Lae, which it had planned to serve.

1.4 Pacific Air Express stated that it had considerable experience in operating in the south-west Pacific region and has an extensive customer base. The applicant said that it already holds an international airline licence and a PNG air operator's certificate for the route.

1.5 The Commission wrote on 22 June 2009, inviting both applicants to address the paragraph 5 criteria in the Minister's policy statement in support of their respective applications. Responses were received on 2 July 2009 from both airlines. Following receipt of these, the Commission published a notice on the same date, inviting submissions from interested parties about the two applications.

1.6 All public material supplied by the applicants and by submitters is filed on the Register of Public Documents. Commercial in confidence material provided by the applicants and submitters is filed on the Commission's Confidential Register.

2 Current services and unused allocations

2.1 The PNG route is served by:

2.2 Air Niugini, which flies services totalling 3,195 seats per week as follows:

- six B767-300, two F100 passenger services and one B757 passenger service per week between Port Moresby and Brisbane;
- two B757 passenger services weekly between Port Moresby and Sydney; and
- 9 F100 and 5 DeHavilland Dash-8 passenger services per week between Port Moresby and Cairns.

2.3 Qantas code shares on all of the Air Niugini services. Qantas also holds an allocation of 17.5 tonnes of freight capacity per week which is planned to be used in a once-weekly service by its wholly-owned subsidiary Express Freighters Australia.

2.4 Pacific Blue Australia operates four B737-800 passenger services weekly between Brisbane and Port Moresby, with Airlines of PNG code sharing on these services.

2.5 Airlines of Papua New Guinea flies seven DeHavilland Dash-8 services per week between Cairns and Port Moresby.

2.6 HeavyLift operates up to three B727-100 freight services per week between Brisbane and Port Moresby.

3 Provisions of relevant air services arrangements

3.1 The air services arrangements between Australia and PNG permit multiple designation of airlines. There are 16.5 tonnes per week of freight capacity available for allocation to Australian designated airlines. The Commission has previously made allocations of freight capacity to HeavyLift (66 tonnes per week, sufficient to operate two B727-100 services and one B727-200 service per week) and Qantas (17.5 tonnes per week, sufficient to operate one B737 freighter service per week).

4 Summary of submissions received in response to applications

4.1 Two public and one confidential submissions were received which supported HeavyLift's application. These were from companies which indicated an intention to utilise HeavyLift's proposed Cairns – Port Moresby service if capacity is allocated to HeavyLift. One confidential submission opposing HeavyLift's application was received. HeavyLift provided a confidential submission disputing claims made by Pacific Air Express as to the relative environmental impact of the respective aircraft types used by the two operators.

4.2 The public submissions in support of HeavyLift's proposal were from Sanko Bussan (PNG) Limited and World-Link International. Sanko Bussan explained that it, and its associates Equatorial Marine Resources Ltd and Fairwell Fisheries Ltd, are fresh tuna and other seafood exporters from Port Moresby to Japan via Cairns and Brisbane. Sanko Bussan stated that its fresh tuna exports were increasing from 8,000 kilograms per week to 42,000 kilograms per week. HeavyLift had been contracted to uplift freight from Port Moresby to Cairns for trans-shipment to Japan. The B727 aircraft to be operated on the Port Moresby – Cairns sector provided better cargo uplift than a B737-300. The ability of the tuna exports to travel via Cairns rather than Brisbane would reduce cargo costs and transit and connection times.

4.3 World-Link stated that it was a large shipper of fresh produce to and from PNG and required the increased capacity by HeavyLift to operate from Cairns rather than Brisbane due to the time milk and other dairy products would otherwise be exposed to non-refrigeration. Several hours would be saved through travel from Cairns rather than Brisbane. World-Link said that HeavyLift's services had greatly improved the PNG route and would continue to do so with the introduction of the Cairns – Port Moresby service.

4.4 Pacific Air Express responded to the submissions from Sanko Bussan and World-Link. It argued that HeavyLift could reschedule existing capacity entitlements to serve Cairns rather than Brisbane. HeavyLift did not require new capacity to serve Cairns. Pacific Air Express reiterated the statement in its 2 July 2009 letter that HeavyLift operates only two scheduled freighter services weekly on the Papua New Guinea route and queried whether the Commission had sought to verify HeavyLift's capacity utilisation. In reference to the Sanko Bussan submission, Pacific Air Express stated that the net payload of its B737-300F was 16,510 kg and gross payload 17,500 kg less the weight of pallets.

4.5 HeavyLift provided a detailed in-confidence response to the capacity utilisation issue. This covered past and recent operations and plans for the use of capacity in the future, including details of flights to be operated in coming weeks as well as plans in the event HeavyLift was to be allocated the additional capacity. The airline has also had to seek charter approvals on various occasions so as not to exceed its scheduled entitlement. Undertakings were offered concerning detailed reporting to the Commission on future capacity use.

5 Summary of applicants' claims against the paragraph 5 criteria

5.1 The claims of the HeavyLift and Pacific Air Express against the paragraph 5 criteria are set out below.

Competition benefits

HeavyLift

5.2 HeavyLift noted that it already operates services from Brisbane to Port Moresby using its existing capacity allocation. Qantas (through its code share with Air Niugini) and Virgin Blue also service this sector with lower-hold capacity on their aircraft.

5.3 HeavyLift said that its request involves the use of capacity between Cairns and Port Moresby, a sector currently served only by PNG carriers with small aircraft. An allocation to HeavyLift would increase competition on the sector and allow a better service to be provided. A much broader range of cargo could be carried between Cairns and Port Moresby than can be in the bellyholds of existing operators. HeavyLift said that it would also charge lower tariffs than the PNG carriers.

5.4 HeavyLift advised that it has contracts to carry cargo between Port Moresby and Cairns. This is fresh tuna for trans-shipment to Japan on Qantas aircraft operating from Cairns to Tokyo. Shipping the tuna via Cairns rather than Brisbane creates a significant time saving, which is particularly important for fresh cargo.

5.5 As a more general point, HeavyLift noted that it had previously relinquished some capacity to enable an allocation to Qantas, and had anticipated that it would in turn be allocated this capacity should Qantas reduce or suspend services.

Pacific Air Express

5.6 Pacific Air Express said that its proposed service would introduce competition on the Australia – Papua New Guinea route. At present, HeavyLift was the only freight airline, operating a B727-100 freighter twice per week between Brisbane and Port Moresby.

5.7 Pacific Air Express stated that its B737 aircraft had a 2.7 tonne lower payload than the B727-100, but a larger volumetric capacity. The airline also had access to a back-up B737 aircraft which would ensure maintenance of its operating schedule. The B737 aircraft was more fuel efficient than the B727. The resulting lower costs would assist Pacific Air Express to compete effectively with other carriers.

Other benefits

Consumer benefits

HeavyLift

5.8 HeavyLift did not address this criterion.

Pacific Air Express

5.9 Pacific Air Express said that its proposed weekly service would give consumers a wide choice of rates, schedules and service delivery. The freight facility at Brisbane airport would allow staff to assist customers personally with their air freight requirements.

Trade benefits

HeavyLift

5.10 In addition to direct benefits associated with the tuna contract, the addition of Cairns as a destination from Papua New Guinea would expand other freight opportunities, such as mining and oil exploration equipment. As an alternative port, Cairns is much closer to Papua New Guinea for transport of cargo between the two countries than Brisbane.

Pacific Air Express

5.11 Pacific Air Express said that it would provide a competitive and reliable freighter service for exporters and importers. The applicant said it had a proven track record in providing freight services in the south-west Pacific region and understands the work needed to develop markets by working with shippers, airport operators and others.

Industry structure

HeavyLift

5.12 HeavyLift did not address this criterion.

Pacific Air Express

5.13 Pacific Air Express said it would provide services on a route where there is currently no competition. The airlines sees opportunity for expansion of the freight market. The extra service would add to the Pacific Air Express group's economies of scale. This would assist in maintaining long term competitive and reliable services.

Other criteria

5.14 Pacific Air Express argued that its B737-300 freighter had a smaller environmental footprint than HeavyLift's B727 aircraft. The B737 was quieter, burned less fuel and emitted less CO₂ and NO_x than the B727.

6 The draft determination and submissions in response

6.1 The Commission issued a draft determination on 6 August 2009, proposing to allocate 16.5 tonnes of freight capacity per week to HeavyLift. Several submissions in response to the draft determination were received. These are summarised as follows:

HeavyLift

6.2 HeavyLift advised that it wished to undertake to fully utilise the capacity by 1 December 2009, rather than 1 September 2009 as proposed in the draft determination. (The Commission notes that the draft determination specified 30 September 2009). HeavyLift indicated that the request had arisen because of schedule changes with aircraft undergoing compliance checks and scheduled heavy maintenance. HeavyLift advised it could comply with the proposed 12-month capacity use monitoring condition.

Pacific Air Express

6.3 Pacific Air Express focussed on the use of capacity entitlements by HeavyLift on the Papua New Guinea route over the past two years. In summary, Pacific Air Express stated that HeavyLift had used 67% of its capacity entitlements for the period and could achieve its commercial objectives without requiring additional capacity. Pacific Air Express said that HeavyLift had operated two flights per month through Cairns since January 2009 and so already had 50% of its proposed operations from Cairns covered by existing available capacity. Pacific Air Express also alluded to the capacity allocation held by Qantas which had been largely unused.

6.4 Pacific Air Express concluded by arguing that the proposed allocation would give one freight airline an effective monopoly over the route, as there is no more available capacity; that not allowing another freight airline onto the route meant competition was prevented; and that if the allocation to HeavyLift was confirmed, only half of the total capacity allocated would be utilised.

Mr Neville Hill

6.5 Mr Hill provided a detailed account of the capacity utilisation by HeavyLift on the Papua New Guinea route. This summarised the flights operated by the airline over a two year period to July 2009, covering scheduled services between Brisbane and Port Moresby and Cairns – Port Moresby and charter services. Mr Hill said that HeavyLift had not fully used its capacity and has overstated their current schedules. Mr Hill also argued that the additional uplift sought by Sanko Bussan could be accommodated by the present capacity available to HeavyLift. Mr Hill said that it appeared HeavyLift had embarked on a process of market monopoly on the Australia – Papua New Guinea route.

DHL Express

6.6 DHL expressed interest in utilising space on a Pacific Air Express cargo service between Australia and Papua New Guinea.

Toll Priority

6.7 Toll said it would strongly support and utilise a Pacific Air Express service. Toll has had a long association with Pacific Air Express, particularly supporting its Solomon Islands service (which the Commission notes is operated as Pacific Air Express (Solomon Islands)). The proposed Pacific Air Express service was ideal for Toll's growing express cargo and logistics business.

Express Export Services

6.8 Express Export Services said that it was an international freight forwarder based in Brisbane. It specialises in freight exports to the Pacific islands. Express Export Services has a longstanding relationship with Pacific Air Express and has used its Solomon Islands services over many years. The submission supported the Pacific Air Express application, saying that the proposed service would bring competition for cargo-only services. Express Export Services said it was interested in utilising a PNG service.

Further exchanges between Pacific Air Express and HeavyLift

6.9 On 21 August, Pacific Air Express provided data obtained from Airservices Australia setting out recorded flights by HeavyLift on the Papua New Guinea route.

6.10 HeavyLift responded to this submission on 24 August. HeavyLift said that the Airservices Australia data quoted by Pacific Air Express did not capture flights operated by HeavyLift under Transglobal and Air Niugini flight numbers. This system issue had now been resolved and all flights from August 2009 onwards would carry HeavyLift flight numbers in the AirServices Australia system. HeavyLift made other comments about the particulars of its operations. It re-emphasised the need for the additional capacity which it said it could easily utilise on a consistent basis. HeavyLift also suggested that Toll should seek designation as an Australian carrier as it considered Toll to be the end user of the capacity, and that Pacific Air Express should be either an Australian or Solomon Islands carrier (ie. not both).

6.11 In turn, Pacific Air Express responded to HeavyLift on 24 August. This covered the relationship between Pacific Air Express and Toll and explained that Pacific Air Express operates as a group of associated companies. Pacific Air Express said it would review the flight data covering Transglobal's flights. Pacific Air Express reinforced its previous views that HeavyLift had not fully utilised its allocated capacity.

6.12 On 25 August, HeavyLift confirmed that the Transglobal designator had been used in the past by HeavyLift for flight planning purposes. This had also been the case when Air Niugini filed flight plans for HeavyLift using the Air Niugini flight code. HeavyLift said that this meant the data provided by Pacific Air Express did not capture all the flights operated by HeavyLift. The data also had not captured services operated by HeavyLift from Darwin and Townsville to Papua New Guinea. HeavyLift said it had been at maximum capacity on the route for the past six months flights. HeavyLift noted it had previously returned unused capacity when another carrier had required it.

7 Commission's assessment

Introduction

7.1 The start-up provisions of the Minister's policy statement do not apply in this case, as the Commission has previously made determinations allocating freight-only capacity to multiple freight carriers. As both applicants have sought the same limited available capacity, the Commission may apply the additional criteria in paragraph 5 of the policy statement, as well as the paragraph 4 criteria. The Commission will apply both the paragraph 4 and 5 criteria in this case.

Paragraph 4 assessment

7.2 Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public.

7.3 HeavyLift is an established international freight carrier which already operates services on the Papua New Guinea route as an Australian designated airline. The Commission is satisfied that HeavyLift meets the paragraph 4 criteria.

7.4 The Commission has previously allocated capacity to Pacific Air Express on the Papua New Guinea route, having undertaken a detailed assessment of its ability to obtain necessary approval and implement its proposals on that earlier occasion. Pacific Air Express obtained the necessary approvals to operate at that time, including designation and licensing as an Australian carrier. However, it was unable to implement its plans because of ongoing security concerns associated with operations to Lae airport. This is a situation which was not in control of the airline. But for this issue, the airline is likely to have implemented its services as planned.

7.5 The Commission understands that Pacific Air Express has maintained the international airline licence it obtained on that earlier occasion and has applied for licence renewal to the Department of Infrastructure, Transport, Regional Development and Local Government. Pacific Air Express stated that it holds a foreign air operator's certificate. The Commission notes however, that it appears the capacity of Pacific Air Express' B737-300 aircraft is 17.5 tonnes, whereas only 16.5 tonnes of capacity is available for allocation. In this regard, the Commission notes that Qantas holds an allocation of 17.5 tonnes per week for its planned weekly B737-300 service to be operated by Express Freighters Australia, the same aircraft type intended to be used by Pacific Air Express. The ability of Pacific Air Express to operate its proposed once weekly flight with this aircraft might therefore only be possible with agreement of the relevant aeronautical authorities to allow it exceed a capacity allocation of 16.5 tonnes per week, should a determination be made in favour of Pacific Air Express. There could be no certainty that such approval would be forthcoming, but given that only an excess of one tonne is involved, the authorities might be prepared to authorise such a small variation. With this reservation, the Commission is of the view that Pacific Air Express is reasonably capable of obtaining the necessary approvals and of implementing its proposal and therefore meets the paragraph 4 criteria.

Paragraph 5 assessment

7.6 The Commission's comparative assessment of the respective proposals against the paragraph 5 criteria in the Minister's policy statement is set out below. The Commission has excluded from this evaluation the tourism and consumer benefits elements of the Other Criteria, as these have no relevance to public benefits associated with purely freight operations. As both carriers have been found to meet the paragraph 4 criteria, the paragraph 5 criteria are used to assess the comparative merits of the competing applications.

Competition Benefits

The extent to which proposals will contribute to the development of a competitive environment for the provision of international air services. The Commission should have regard to:

- *the need for Australian carriers to be able to compete effectively with one another and the carriers of foreign countries;*

- *the number of Australian carriers on a particular route and the existing distribution of capacity between Australian carriers;*
- *prospects for lower tariffs, increased choice and frequency of service and innovative product differentiation;*
- *the extent to which applications are proposing to provide capacity on aircraft they will operate themselves;*
- *the provisions of any commercial agreement between an applicant and another carrier affecting services on the route but only to the extent of determining comparative competition benefit between competing applications;*
- *any determinations made by the Australian Competition and Consumer Commission or the Australian Competition Tribunal in relation to a carrier using Australian entitlements under a bilateral arrangement on all or part of the route; and*
- *any decisions or notifications made by the Australian Competition and Consumer Commission in relation to a carrier using Australian entitlements under a bilateral arrangement on all or part of the route.*

7.7 The Commission notes that Pacific Air Express and HeavyLift plan to add capacity to different sectors of the PNG route. Pacific Air Express would service Brisbane and Port Moresby, while HeavyLift would operate between Cairns and Port Moresby. This creates different competitive scenarios on the Papua New Guinea route.

7.8 HeavyLift currently is the only direct pure freight operator on the Brisbane – Port Moresby sector. However, the sector is competitive for freight because Air Niugini operates a wide-body B767-300 aircraft with a significant freight capability in its belly-hold. The B767-300 aircraft type typically holds about 30 containers with a total volume over 100 cubic metres. Air Niugini also operates more frequently than HeavyLift. Air Niugini has the opportunity to attract freight carriage six days per week on its B767 (and a smaller amount of freight on its once weekly B757 service), compared with the two or three days on which HeavyLift operates. On the other hand, HeavyLift’s dedicated freight aircraft provides scope for the carriage of bulkier or non-standard items which are not necessarily suited to carriage in containers on the B767 aircraft. Further competition for freight between Brisbane and Port Moresby is provided by Pacific Blue, which operates four weekly B737-800 services per week on this sector. These aircraft offer some limited belly-hold cargo capacity. The presence of these three operators means there is already a competitive market for freight on the Brisbane – Port Moresby sector.

7.9 An allocation of capacity to Pacific Air Express would see the addition of a once weekly dedicated B737 cargo service to the Brisbane – Port Moresby sector. This would generate some additional competition for freight carriage on this sector, although Pacific Air Express would be at a competitive disadvantage from a frequency point of view in comparison with the other established operators on the route. This would be likely to lessen scope for Pacific Air Express to have a competitive impact in this market segment. Submitters have indicated support for Pacific Air Express’ services, as they have for HeavyLift’s services.

7.10 An allocation to HeavyLift would enable it to increase the volume of capacity it is able to operate by substituting 26 tonne capacity B727-200's for the 20 tonne B727-100s on a regular basis, while still leaving capacity free to dedicate to Cairns. This additional capacity would help to offset its frequency disadvantage on the Brisbane – Port Moresby sector by providing flexibility to carry particularly heavy types of cargo, cater for future demand and avoid instances of leaving excess freight behind, which it advised orally have occurred from time to time due to a lack of capacity on the B727-100.

7.11 The Commission considered carefully the suggestion from Pacific Air Express that HeavyLift could operate to Cairns as well as Brisbane by limiting frequency to Brisbane and continuing to operate smaller capacity B727-100 aircraft. The Commission concluded that the marginal competitive gains from a once weekly B737 (with capacity of only 17.5 tonnes) in this already strongly competitive market, were less than would be achieved from HeavyLift having the ability to strengthen its capacity volumes against Air Niugini and Pacific Blue, given their frequency advantage.

7.12 The already competitive situation on the Brisbane – Port Moresby sector contrasts clearly with the circumstances on the Cairns – Port Moresby sector, where there is very limited freight capability. There is no regular dedicated freighter service and no wide-body passenger aircraft service with belly-hold capacity. Only narrow-body Fokker F100 and DeHavilland Dash-8 aircraft currently operate regularly on this sector. There is currently almost a complete absence of scope for the carriage of cargo on this sector, certainly on any scale or volume, although HeavyLift has operated some services on that sector from time to time.

7.13 The Commission has previously allocated 17.5 tonnes of capacity per week to Qantas which is proposed to be utilised by Qantas' subsidiary, Express Freighters Australia, to operate a once weekly B737-300 freighter aircraft on a Cairns – Port Moresby routing. Under the conditions of the relevant determination, the capacity is required to be fully utilised by 30 November 2009 – in other words, within a fairly short period of time. The introduction of a once weekly B727 service by HeavyLift, proposed at nearly the same time (December) would create a strongly competitive situation between the two carriers. Supporting submissions for HeavyLift's application demonstrate that high value, time sensitive cargoes such as tuna and dairy products would be regularly carried on the Cairns services, underpinning the viability of HeavyLift's operations. In the absence of HeavyLift's entry, Express Freighters Australia would have virtually a monopoly on freight carriage between Cairns and Port Moresby. In view of the limited freight capacity availability on this route, the Commission will monitor closely plans for the commencement of operations by Express Freighters Australia. The Commission has recently received oral assurances from Qantas that the capacity is planned to be used by 30 November 2009 as required. The Commission is highly unlikely to grant Qantas any further extension of time for Express Freighters Australia to commence services and would expect Qantas to hand back the capacity promptly if services are not operating by the required date.

7.14 Having considered the comparative competitive benefits from the two proposals, the Commission concludes that there are likely to be substantially greater gains from the introduction of a regular weekly service between Cairns and Port Moresby by HeavyLift, together with expanding capacity on the Brisbane – Port Moresby sector, compared with a weekly service by Pacific Air Express on the already well-served and competitive

Brisbane – Port Moresby sector. The presence of HeavyLift on the Cairns sector would create a strong incentive for Express Freighters Australia to compete strongly on rates, whereas it would otherwise have that market segment to itself. Both carriers would be operating only once per week, so neither would hold a frequency advantage, although there would be nothing to prevent HeavyLift operating more than once per week if commercial circumstances warranted this. On the other hand, Pacific Air Express' entry to the Brisbane sector is likely to have only a marginal competitive impact against established carriers with higher frequency of operation.

7.15 As noted, submissions in support of HeavyLift's application indicate that there is likely to be good demand for HeavyLift's services on the Cairns – Port Moresby sector with commitments for the carriage of tuna in particular, as well as other products. The time advantage for operations via Cairns rather than Brisbane for perishable commodities including dairy was highlighted in submissions. This cargo should underpin the viability of these operations in competition with Express Freighters Australia.

7.16 HeavyLift would achieve higher utilisation for its aircraft which currently operate to Papua New Guinea. This would result in a spreading of fixed costs across as well as producing extra revenue. It should improve HeavyLift's ability to compete for PNG market share. This should enable HeavyLift to continue to compete effectively with Air Niugini. Pacific Air Express would also derive some economies of scale, as its aircraft are also used by the sister carrier, Pacific Air Express (Solomon Islands).

7.17 In summary, the Commission finds that the greatest public benefits against this criterion would be achieved through HeavyLift having scope to introduce regular scheduled services on the Cairns - Port Moresby sector, while having the ability to increase capacity on the Brisbane sector.

Other benefits

Trade Benefits

In assessing the extent to which applications will promote international trade, the Commission should have regard to:

- *the availability of frequent, low cost, reliable freight movement for Australian exporters and importers.*

7.18 The Commission considers that a once weekly service by HeavyLift between Cairns and Port Moresby would produce substantial trade benefits. There is currently no dedicated capacity operated on this sector. A dedicated weekly freight service by HeavyLift would, together with Express Freighters Australia, fill the vacuum in freight capability between Cairns and Port Moresby and provide connections with services from Cairns to third-countries such as Japan. This would strengthen international trade. HeavyLift's service would greatly assist the rapid movement of freight travelling from Papua New Guinea via Australia to third countries, as such freight currently must travel the much longer sector to Brisbane. As noted under the competition criterion, submissions provided by companies supporting HeavyLift's application show that there is clear demand for HeavyLift's services, which will benefit Australian exporters and importers. The expected entry of Express Freighters Australia later in 2009 will further enhance the

promotion of international trade, and competition between the two carriers will be likely to lead to lower costs to exporters and importers.

7.19 Pacific Air Express' proposal would achieve an incremental gain to freight space availability on the Brisbane – Port Moresby sector, and submitters have indicated a general intention to utilise its services. However, as noted above, that part of the Papua New Guinea route appears to be well-serviced already through a combination of HeavyLift's existing pure freight services and the wide-body capability available on Air Niugini's B767 aircraft in particular. The trade benefits from the Pacific Air Express proposal are likely to be significantly less than those associated with the HeavyLift proposal.

Industry Structure

The Commission should assess the extent to which applications will impact positively on the Australian aviation industry.

7.20 The Commission considers that both carriers proposals would have a positive impact on the Australian aviation industry.

Other criteria

The Commission may also assess applications against such other criteria as it considers relevant.

7.21 The Commission has noted the arguments mounted by Pacific Air Express in relation to the claimed environmental superiority of its proposal. While it appears that the B737 may have a smaller environmental footprint per flight compared with the B727, once emissions per available tonne of capacity are considered, the differences appear relatively minor. The Commission has therefore placed little weight on this criterion.

Conclusion

7.22 The Commission considers that both HeavyLift and Pacific Air Express are reasonably capable of obtaining the necessary approvals and of implementing their proposals, with some reservations in respect of Pacific Air Express as noted above, and therefore meet the paragraph 4 criteria. The Minister's policy statement makes it clear that use of capacity by Australian carriers which meet paragraph 4 is of benefit to the public.

7.23 Having assessed the two applications against the paragraph 5 criteria, the Commission finds public benefit is likely to be maximised by the allocation of the 16.5 tonnes of capacity per week to HeavyLift. Under paragraph 5.2 of the Minister's policy statement, in applying all criteria, the Commission should take as the pre-eminent consideration the competition benefits of each application. The Commission considers that there are clearly greater competitive benefits likely to be associated with the HeavyLift proposal compared with Pacific Air Express' plans. The Commission has also found that the trade benefits of HeavyLift's proposal strongly outweigh those of the Pacific Air Express proposal.

7.24 The Commission notes that HeavyLift has said in its application that a B727-100F aircraft would operate with 11 tonnes of freight on the Port Moresby – Cairns sector. It appears to be referring to the likely payload to be carried on these services. In fact, the capacity available to be allocated relates to the physical capacity of the aircraft operating the sector. In relation to the B727-100F, in a recent previous case the Commission was satisfied that the operating capacity of this aircraft is 20 tonnes (see Determination [2007] IASC 122), and this specification is provided on HeavyLift’s website for this aircraft type, with the B727-200F having a capacity of 26 tonnes.

7.25 An allocation of the remaining available capacity of 16.5 tonnes per week to HeavyLift would take its total allocation on the Papua New Guinea route to 82.5 tonnes per week. HeavyLift’s plans for the use of capacity for the future involve a combination of aircraft type substitutions (the 26 tonne B727-200 for the 20 tonne B727-100) together with the introduction of the proposed new services between Cairns and Port Moresby which are strongly supported by submissions about HeavyLift’s application. The Commission has no objection to HeavyLift using the capacity flexibly as market conditions warrant, provided its overall utilisation remains within the weekly total allocation. This will mean that HeavyLift may need to vary frequencies from time to time to accommodate the larger capacity aircraft within the overall capacity limit. The “lumpiness” of the capacity of each aircraft will mean that HeavyLift is likely to have some small amounts of capacity unused from week to week. For example, if HeavyLift operated four weekly B727-100 services per week, it would utilise 80 tonnes of capacity. If it used three B727-200 services per week it would exercise 78 tonnes. However, for all practical purposes, the capacity would be fully utilised. Should HeavyLift plan to exceed its capacity entitlement by a small amount from time to time, it could only do so if approval to do so was sought by HeavyLift from aeronautical authorities and agreed between them. This is a matter for HeavyLift to take up with the relevant authorities should it wish to pursue the issue. The Commission understands that the air services arrangements provide for flexibility to exceed entitlements by small amounts in certain circumstances, such as where seasonal factors are involved.

7.26 The submissions opposing an allocation to HeavyLift raised concerns about the inconsistency of utilisation by HeavyLift of its existing capacity entitlements. Pacific Air Express also stated that HeavyLift operates only twice per week between Brisbane and Port Moresby and reinforced this view in further submissions including in response to the draft determination. HeavyLift has strongly disputed this assertion. There are some technical issues involved, such as the use of Transglobal flight numbers on some HeavyLift services and the possibility that certain HeavyLift flights (such as from Darwin and Cairns) have not been included in the data provided by Pacific Air Express. HeavyLift stated that it has been required to operate charter services on a number of occasions so as not to exceed weekly scheduled capacity allocations.

7.27 The Commission is aware that HeavyLift’s capacity utilisation has been variable across a number of routes on which it holds capacity, including Papua New Guinea, but is generally satisfied that its capacity utilisation on the route has been satisfactory. The Commission notes in respect of these comments that HeavyLift held an allocation of only 40 tonnes per week from March 2006 until December 2007, when it was allocated a further 26 tonnes per week. The airline was not required to fully use that additional capacity until March 2008. The carrier’s website shows services available on three days

per week and the airline has timetable approval for three B727 services per week between Brisbane and Port Moresby from the Department of Infrastructure, Transport, Regional Development and Local Government. The Commission has sought and obtained detailed information from HeavyLift about its recent and planned capacity utilisation. In particular, this has satisfied the Commission about future capacity utilisation which is the important issue of focus now that all capacity is allocated on the route.

7.28 As with other carriers, HeavyLift reports six-monthly to the Commission on its capacity utilisation. As a result of this process, HeavyLift has, over time, willingly handed back capacity on a number of routes, including Papua New Guinea. On the Papua New Guinea route the airline handed back 20 tonnes per week of capacity in 2006, and in a potentially contested case with Qantas in late 2007 reduced the amount of capacity it had initially sought to facilitate Qantas' plans. The Commission is satisfied that HeavyLift has not hoarded capacity with no intention of using it, or with the intention of achieving a monopoly on cargo carriage on the route. There is only limited freight capacity negotiated under the air services arrangements (100 tonnes per week) and until May 2009, Qantas had held one third of this.

7.29 The Commission has allowed HeavyLift flexibility in the use of its capacity, as it has with other carriers on a range of routes, taking account of seasonal, local and other factors. Over the past year or so those factors include the severe economic downturn affecting all operators and which is outside their control. The Minister's policy statement enables the Commission to interpret capacity as fully utilised in such circumstances. For example, Qantas has held capacity unused since December 2007 on the Papua New Guinea route and the Commission recently granted it an extension of time for the full exercise of that capacity until November 2009. The Commission observes that similar flexibility was granted to Pacific Air Express in earlier times when it was granted several successive extensions of time for the use of allocated capacity on the Papua New Guinea route, resulting in the capacity being unused for some years before Pacific Air Express eventually handed it back.

7.30 Until the current case, for reasons set out in the previous paragraph, some under-utilisation has not been a concern for the Commission, together with the fact that capacity has remained available for allocation. There has not been the necessity for rigorous monitoring of capacity use on this route in these circumstances. As a result of the allocation of the balance of the available capacity by this determination and the concerns raised by Pacific Air Express, the Commission will require HeavyLift to report monthly for the next twelve months on its weekly capacity utilisation on the route. As noted above, because of the fixed nature of aircraft capacity it will not be possible for HeavyLift to use every last tonne of available capacity, depending on the particular aircraft types operated from time to time. This may result in some small amounts of capacity being unusable from week to week. This will be necessary in order for HeavyLift not to exceed its total entitlement. For all practical purposes, the capacity would be fully utilised.

7.31 The Commission will agree to HeavyLift's request for a slight deferral of the date by which capacity must be fully utilised, to 1 December 2009. In practice, this gives HeavyLift a relatively short period within which to implement additional services.

7.32 As noted above, there is only 100 tonnes of cargo capacity available under the air services arrangements to Australian carriers. On this point, the Commission records that

all of the capacity available will be fully allocated following the making of this determination. As there is evidently demand for additional freight capacity in the market, the Commission considers that the Department of Infrastructure, Transport, Regional Development and Local Government should give priority to seeking to expand cargo capacity entitlements in consultation with the Papua New Guinea authorities.

8 Determination allocating capacity on the Papua New Guinea route to HeavyLift Cargo Airlines Pty Ltd (HeavyLift) ([2009] IASC 117)

8.1 The Commission makes a determination in favour of HeavyLift Cargo Airlines (HeavyLift), allocating 16.5 tonnes of freight capacity per week in each direction on the Australia – Papua New Guinea route, in accordance with the Australia – Papua New Guinea air services arrangements.

8.2 The determination is for five years from the date of the determination.

8.3 The determination is proposed to be subject to the following conditions:

- HeavyLift is required to fully utilise the capacity from no later than 1 December 2009 or from such other date approved by the Commission;
- only HeavyLift is permitted to utilise the capacity;
- HeavyLift is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- HeavyLift will be required to report monthly to the Commission, detailing its frequency and aircraft capacities operated on the route each week for the preceding month, for twelve months from the beginning of December 2009;
- changes in relation to the ownership and control of HeavyLift are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Papua New Guinea air services arrangements being withdrawn; or
 - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of HeavyLift or be in a position to exercise effective control of HeavyLift, without the prior consent of the Commission; and
- changes in relation to the management, status or location of operations and head office of HeavyLift are permitted except to the extent that any change would result in the airline ceasing to be an airline designated by the

Australian Government for the purposes of the Australia – Papua New Guinea air services arrangements.

Dated 25 August 2009

John Martin
Chairman

Philippa Stone
Member

Ian Smith
Member